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R. v. Sra

Between
Her Majesty the Queen, and
Gurdev Sra, Rashpal Pannu and Baljinder Pannu

[1996] A.J. No. 990

Alberta Provincial Court
Criminal Division - Edmonton, Alberta

Caffaro A.C.J. Prov. Ct.

November 8, 1996.

(5 pp.)

Criminal law -- Attempts, conspiracies, accessories and parties -- Conspiracies -- Conspiracy to effect an unlawful purpose.

Trial on charges of conspiracy to defraud. The defendant Sra, the owner of a convenience store, was charged with one count of issuing a false record of employment. Baljinder Pannu, an alleged employee of Sra, faced 13 counts of unlawfully negotiating benefit warrants to which she was not entitled, while her brother-in-law Rashpal Pannu faced 16 counts alleging that in claiming benefits he made a false statement that he did not work the week for which the benefit was to be paid. The Crown alleged that Baljinder, who was pregnant at the time of the alleged incidents, was nominally an employee, in order to qualify for unemployment insurance benefits, but it was actually Rashpal who worked, and thus was being paid by both the Unemployment Insurance fund and Sra. The existence of a joint bank account in the names of Baljinder and Rashpal was seen as evidence that Rashpal had actually been paid by Sra, since Baljinder's paycheques were deposited into the account.

HELD: Accused acquitted. The Crown did not prove its case beyond a reasonable doubt. While Rashpal was helping out in the store, there was nothing concrete tying him to money received from Sra. His action of declaring the income he did receive from Sra on one occasion was inconsistent with someone committing fraud. Having found the Pannus innocent, there was nothing to hold against Sra.

Counsel:

No counsel mentioned.

1 CAFFARO A.C.J. PROV. CT.:-- The accused on these charges face a total of 30 counts. The accused Gurdev Sra faces one count, Count 1, that he did unlawfully acquiesce in the making of a statement on a certificate that he knew to be false, that is, a record of employment on September 1, 1993 to December 31, 1993 pertaining to Baljinder Pannu. Rashpal Pannu faces 16 separate counts, counts 2 to 17 inclusive on the indictment, which allege that he in claiming for benefits made a false statement that he did not work the week for which the benefit was to be paid. Baljinder Pannu faces 13 counts of unlawfully negotiating benefit warrants to which she was not entitled on counts 18 to 30 inclusive in the indictment.

2 The allegation of the Crown is that for the weeks commencing with the 29th of August, 1993 until December, Baljinder Pannu was represented as being employed by G.S. Convenience Store, when in fact she was not. Cheques payable to Baljinder Pannu by G.S. Convenience Store, ostensibly for wages, were deposited into an account at the Canadian Imperial Bank of Commerce, Millwoods Branch. The account was jointly held by Baljinder and Rashpal Pannu, according to evidence given by Ms. Madsen, who is an officer of the bank. On examination in cross by Mr. MacEachern she admitted that she did not know Mr. Rashpal Pannu or Baljinder Pannu.

3 Kevin Kostick took the stand and said that for the most part he was served either by Mr. Sra or Mr. Pannu and does not recall or remember Mrs. Pannu being in the store specifically. Nita Jolly remembers both Rashpal and Baljinder being in the store as does Priscilla Asamoah, another witness. Jenny Kim, a part-time employee, Scott James MacKenzie particularly identified Mrs. Baljinder Pannu as being in the store at least once a week. He qualified it by saying she was not actually working, that is, she was when he saw her not at the till taking in monies. Mr. Serink who was also an employee of a fellow tenant of the mall along with Mr. MacKenzie also gave evidence as to seeing ladies, one of whom he recognized as Mrs. Pannu in the store. Mr. Vijay Gangwani, the accountant for Mr. Sra and G.S. Convenience Store, testified that he relied on the figures he received from Mr. Sra or his wife who were directors of the company to prepare statements. The evidence of Mr. Deol does not add much to what the other witnesses have already said in that they put both Mrs. Baljinder Pannu at least occasionally at the scene and put Mr. Pannu as working during the relevant periods. Mr. Jaswal identified Baljinder Pannu as working in the store in October, November or December of 1993. He further states that he saw Rashpal Pannu in the early part of 1994 sitting in the store. Billing, another witness, was looking for an opportunity for his wife's relatives and visited the G.S. Convenience Store as a possible investment opportunity in October and November 1993. He also identified the lady working there as Baljinder Pannu.

4 The theory of the Crown is that in this case there was a conspiracy whereby Baljinder Pannu who was pregnant would be the nominal employee for G.S. with the connivance of Mr. Sra and that the actual work would be done by her brother-in-law Rashpal. This would enable Rashpal, as he was not being paid directly by Mr. Sra, to claim unemployment benefits and would enable Baljinder as the cashier to amass sufficient unemployment insurance credit to apply for maternity benefits on termination of her employment. The Crown further alleges that in fact Rashpal was paid because the cheques that Baljinder received from Mr. Sra were deposited in a joint account which was joint to Baljinder Pannu and Rashpal Pannu. The Crown has further chosen to particularize each and every count and is faced with the daunting task of proving on each and every count that Rashpal Pannu was employed. In order to succeed against Baljinder on particularized charges the Crown would have to prove that at all times Baljinder was not working. It further will have to prove in order to find Mr. Sra guilty that he knew or acquiesced in this scheme. The investigator, Mr. Whittaker, was convinced this was part of a wider scheme to defraud. He expressed his opinion candidly to prospective witnesses and this may have influenced them.

5 While a great deal of suspicion can be attached to the actions and the motives of all the accused, this court is not convinced that the Crown has proved its case beyond a reasonable doubt. We have circumstantial and direct evidence that at times Baljinder Pannu attended at the convenience store during the period when she was supposed to have not been working. We find that her brother-in-law was helping out in the store but there is nothing tying him to money received, except the bank deposits to the joint account. Indeed, in one of his applications for benefits where he did get paid directly by Mr. Sra, he declared that income. That action alone is inconsistent with someone who is committing a fraud. I find that in each case against the accused the Crown has failed to prove its case beyond a reasonable doubt and I accordingly acquit the accused Rashpal Pannu and Baljinder Pannu. It follows of course that Count 1 as against Gurdev Sra is also dismissed, the previous Count 31 having been dismissed against him.

CAFFARO A.C.J. PROV. CT.

qp/s/ala